Ray Trial Bid Faces a Setback

By Les Payne

The death this week of a federal judge will adversely affect James Earl Ray's chances for a trial in the Martin Luther King assassination case, according to defense attorneys.

William Miller, 68, who died in Cincinnati Monday, apparently of a heart attack, was one of the three judges of the U.S. Sixth Circuit Court of Appeals preparing to rule on Ray's request that he be tried for the King murder, to which Ray had pleaded guilty.

In prior court proceedings on the case, Miller had been the jurist most vigorous in favoring Ray's appeals. Defense attorneys had been expecting Miller and at least one other judge to agree to grant Ray a trial "within weeks." But because Miller died before rendering his oinion, the two remaining judges will decide the case. "If they arrive at a split decision, the entire case will have to be reheard," said a spokesman for the Sixth Circuit Court of Appeals.

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"Miller's untimely death is very bad news for our case," James Lesar, one of Ray's attorneys, said. "I had been counting on him to vote in our favor."

The two remaining judges are Harry Philips and Anthony Celebrezze. Ray's lawyers had expected Philips to vote with Miller and speculated that Celebrezze would probably oppose a new trial. "There is now a fairly good chance of a split vote," Lesar said.

"Miller's death may possibly take us back to square one," said Harold Weisberg, an investigator who, with Lesar, has constructed Ray's present defense. The appeal for a trial is based on claims that Ray was coerced by his former attorney, Percy Foreman, to plead guilty in 1969 to the King murder. He was sentenced to 99 years.

Ray renounced his plea the day after he entered it and since has maintained that he was an unwitting participant in a conspiracy to kill King. Few of the circumstances of the April 4, 1968, killing—including why and how Ray allegedly committed the crime, or whether there was a conspiracy—emerged during the brief court proceeding seven years ago.

On Jan. 29, 1974, Miller wrote the Appeals Court opinion which ordered an evidentiary hearing to review the case against Ray. Philips concurred in the decision and Celebrezze disagreed. "The entire record reeks with ethical, moral, and professional irregularities demanding a full-scale inquiry," Miller wrote in his opinion. "Without such a hearing, the record leaves no alternative to concluding that Ray's attorneys were more interested in capitalizing on a notorious case than in representing the best interest of their client."

In a 1970 civil case which reached the Sixth Circuit, the court ruled 2-1 against Ray's attempt to sue Foreman for damages. In that decision, it was Miller who favored Ray by writing a vigorous dissent.

Ray's attorneys say that, if granted a trial, they could destroy the state's contention that Ray acted alone in the assassination. "The State can't prove that Ray was on the scene when the crime was committed and that he fired a shot from that window with that rifle," Lesar said.

The FBI and the prosecution have maintained that Ray fired the death shot while resting the rifle on the sill of a flophouse window across from the Lorraine Motel in Memphis, where King was staying. FBI documents and a recent Newsday interview with bureau director Clarence Kelley raised doubts that the prosecution can, as it had claimed earlier, positively link the death bullet with a rifle with Ray's fingerprints on it found near the scene. The defense also contends that the bureau cannot prove that Ray's rifle was ever fired from the flophouse window.

"The state does not have the evidence to link the rifle to the windowsill, and they don't have the evidence to link the bullet to the rifle," Lesar said.

A spokesman for the Sixth Circuit Court of Appeals would not say when the judges would decide on Ray's appeal. The defense attorneys expect a delay because of Miller's death. "It is now up to the two remaining judges," the spokesman said. "It could come in tomorrow, or it could take months."

Ray in 1974